

ORIGINAL



0000001145

BEFORE THE ARIZONA CORPORATION COMMISSION

56PA

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTEN K. MAYES
Commissioner

2004 MAR 19 P 12:42

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
PINE WATER COMPANY FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES BASED THEREON
FOR UTILITY SERVICE AND FOR
APPROVAL TO INCUR LONG-TERM DEBT

Docket No. W-03512A-03-0279

NOTICE OF FILING

The Arizona Corporation Commission Staff gives notice of filing a copy of the Protective Agreement in the above-referenced docket.

RESPECTFULLY SUBMITTED this 19th day of March, 2004.

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAR 19 2004

DOCKETED BY

By:

Gary H. Horton
Attorney, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-6026


1 Original and 13 copies of the foregoing filed
2 this 19th day of March, 2004, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Copy of the foregoing mailed this 19th day
8 of March, 2004, to:

9 Jay L. Shapiro
10 Patrick J. Black
11 Fennemore Craig
12 3003 N. Central, Suite 2600
13 Phoenix, AZ 85012
14 Attorneys for Pine Water Company

15 John Gliege
16 Law Office of John G. Gliege
17 P. O. Box 1388
18 Flagstaff, AZ 86002-1388
19 Attorney for Pine-Strawberry
20 Water Improvement District

21 
22 _____

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCHMILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
PINE WATER COMPANY FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES BASED THEREON
FOR UTILITY SERVICE AND FOR
APPROVAL TO INCUR LONG-TERM DEBT

DOCKET NO: W-03512A-03-0279

PROTECTIVE AGREEMENT

Certain parties in the above-captioned matter have requested access to certain documents, namely copies of group insurance documents, that Pine Water Company ("Company") alleges may be of a proprietary, confidential or legally protected nature ("Confidential Information"). In order to expedite the provision of information to such parties, the parties agree as follows:

§1. **Non-Disclosure.** Except with the prior written consent of the party originally designating a document as Confidential Information, or as hereinafter provided under this Agreement, no Confidential Information may be disclosed to any person. This requirement does not prohibit a party from using and disclosing Confidential Information provided by Company in reports or documents that aggregate all information gathered from the parties to this docket.

1 **§2. Designation of Confidential Information.** For purposes of this
2 Agreement, all documents, data, information, studies and all other written, printed,
3 transcribed, audio-taped or video-taped materials furnished that Company claims to be a
4 trade secret, or of a proprietary, confidential, or legally protected nature, shall be
5 designated and referred to herein as "Confidential Information". Access to and review of
6 Confidential Information shall be strictly controlled by the terms of this Agreement.

7 All Confidential Information provided pursuant to this Agreement shall be
8 so marked by Company with a designation indicating its alleged trade secret, proprietary,
9 confidential or legally protected nature. The Company shall memorialize any
10 Confidential Information disclosed verbally by Company in writing within five (5)
11 business days of its verbal disclosure, and the writing shall be marked by the Company
12 with the appropriate designation. Any Confidential Information disclosed verbally by
13 Company shall be safeguarded by the receiving party and its contracting consultants only
14 during the five (5) business day period during which memorialization may be provided.
15 Company agrees that it will carefully consider the basis upon which any information is
16 claimed to be trade secret, proprietary, confidential, or otherwise legally protected.
17 Information that is publicly available from any other source, shall not be claimed as
18 Confidential Information under this Agreement.

19 **§3. Performance Under Agreement Does Not Result in Waiver or**
20 **Disclosure.** Execution of this Agreement by the parties and performance of their
21 obligations hereunder shall not result in waiver of any claim, issue or dispute concerning
22 the trade secret, proprietary, confidential or legally protected nature of the Confidential
23 Information provided. Neither shall the limited provision of Confidential Information by
24 Company pursuant to this Agreement, nor the limited provision by another party of
25 Confidential Information pursuant to Section 6 of this Agreement constitute public
26 disclosure of it.

1 **§4. Access to Confidential Information.** Prior to reviewing any Confidential
2 Information, any party and/or its independent contracting consultants shall first be
3 required to read a copy of this Protective Agreement, and to certify by their signatures on
4 Exhibit A of this Agreement, that they have reviewed the same and have consented to be
5 bound by its terms. Exhibit A of this Agreement shall contain the signatory's full name,
6 business address and employer, and the signatory's position with, or relationship to the
7 Arizona Corporation Commission ("Commission"). Upon their execution, any and all
8 Exhibits shall be promptly provided to counsel for Company.

9 **§5. Use of Confidential Information.** All persons who are signatories to this
10 Agreement shall neither use nor disclose the Confidential Information for purposes of
11 business or competition, or for any purposes other than those necessary for the
12 disposition of this docket, including preparation for and the conduct of any administrative
13 or legal proceeding. All persons entitled to review or afforded access to Confidential
14 Information shall keep it secure as trade secret, confidential, or legally protected
15 information in accordance with the purposes and intent of this Agreement.

16 **§6. Non-Signatories Entitled to Review.** The information provided pursuant
17 to this Protective Agreement may be disclosed to other members of the Commission by
18 any Commission signatory to this Agreement only to the extent that disclosure is
19 necessary to the disposition of this docket. Such disclosure may be made only if the non-
20 signatory is provided with a copy of this Agreement and agrees to be bound by its terms.

21 **§7. Disclosure of Information to the Public.** The Confidential Information
22 provided pursuant to this Agreement shall not be disclosed, nor shall it be made a part of
23 the public record in this docket, or in any other administrative or legal proceeding unless:
24 Company is provided seven (7) business days written notice that information designated
25 by Company as Confidential Information shall be subject to disclosure as a public record.
26 Upon the expiration of seven (7) business days from the date written notice is received by

1 Company, any Confidential Information identified in the notice as subject to disclosure
2 shall become part of the public record in this docket, unless Company initiates a
3 protective proceeding under the terms of this Agreement.

4 **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event
5 that Company seeks to prevent public disclosure of Confidential Information pursuant to
6 Paragraph 7 above, Company shall file within seven (7) business days of receipt of
7 written notice, a motion presenting the specific grounds upon which it claims that the
8 Confidential Information should not be disclosed or should not be made a part of the
9 public record. The party shall have an opportunity to respond to the motion. Company's
10 motion may be ruled upon by either the Commission or an assigned Commission
11 Administrative Law Judge ("ALJ"). Company may provide to the Commission or the
12 ALJ, the Confidential Information referenced in the motion without waiver that the
13 information should remain confidential under the terms of this Agreement. Any
14 Confidential Information so provided shall be kept under seal for the purpose of
15 permitting inspection by the Commission or the ALJ prior to ruling on the motion.

16 Notwithstanding any determination by the ALJ or the Commission that any
17 Confidential Information provided pursuant to this Agreement should be made a part of
18 the public record or otherwise disclosed, public disclosure shall not occur for a period of
19 seven (7) calendar days so that Company may seek judicial relief from the ALJ or the
20 Commission's decision. Upon expiration of the seven (7) day period, the Commission
21 shall release the information to the public unless Company has received a stay or
22 determination from a court of competent jurisdiction that the records, data, information or
23 study are proprietary and are not public records subject to disclosure under A.R.S. § 39-
24 101 et seq.

25 **§9. Judicial Proceedings Related to NonParty's Request for Disclosure.**
26 Where the Commission, ALJ or Staff determine that disclosure is not appropriate, in any

1 judicial action against the Commission and/or Commissioners by the party seeking
2 disclosure of the information, unless specifically named, Company as the real party in
3 interest, shall join in the action as a co-defendant. Company also agrees to indemnify and
4 hold the Commission harmless from any assessment of expenses, attorneys' fees or
5 damages under A.R.S. § 39-121.02 or any other law, resulting from denial of access by
6 the Commission to the information, data, records or study subsequently found to be non-
7 confidential.

8 In the event that the Commission becomes legally compelled (by
9 deposition, interrogatory, request for documents, subpoena, civil investigative demand or
10 similar process) to disclose any of the Confidential Information, the Commission shall
11 provide Company with prompt written notice of such requirement so that Company may
12 seek an appropriate remedy and/or waive compliance. Company agrees that upon receipt
13 of such notice, Company will either undertake to oppose disclosure of the Confidential
14 Information or waive compliance with this Agreement. In the event that disclosure of the
15 Confidential Information is ordered, the Commission agrees to furnish only that portion
16 of the Confidential Information that is legally required.

17 **§10. No Preclusion of Evidentiary Objections.** In the event that disclosure of
18 Confidential Information occurs, the provision of such information by Company pursuant
19 to this Agreement shall not limit the right of Company to object to its relevance or
20 admissibility in proceedings before the Commission.

21 **§11. Return of Confidential Information.** Upon the final disposition of any
22 administrative or legal proceeding arising in or from this docket, within 60 days
23 Company shall submit a written request for the return of all Confidential Information,
24 copies thereof, and notes made by signatories to this Agreement. If such a request is not
25 received within the stated 60 days, all Confidential Information shall be destroyed, copies
26 thereof, and notes made by signatories to this Agreement, or return to Company all

1 Confidential Information, copies thereof, and notes made by signatories to this
2 Agreement, following written notice to Company of the intent to return.

3 **§12. No Admission of Privileged or Confidential Status.** By participating in
4 this Agreement, the parties and its contracting consultants are neither admitting nor
5 agreeing with Company that any of the materials or communications designated as
6 Confidential Information are, either in fact or as a matter of law, a trade secret or of a
7 proprietary, confidential or legally protected nature.

8 **§13. Breach of Agreement.** Company, in any legal action or complaint it files
9 in any court alleging breach of this Agreement shall, at the written request of the
10 Commission, name the Arizona Corporation Commission as a Defendant therein.

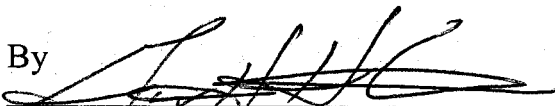
11 **§14. Non-Termination.** The provisions of this Agreement shall not terminate at
12 the conclusion of this proceeding.

13 DATED this 19th day of March 2004.


14 ARIZONA CORPORATION
15 COMMISSION

FENNEMORE CRAIG

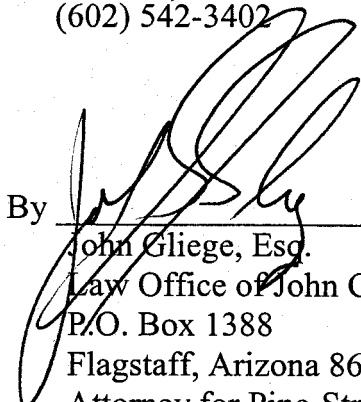
16 By


17 Gary Horton, Legal Division
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, AZ 85007
21 (602) 542-3402

By


22 Jay L. Shapiro
23 Patrick J. Black
24 3003 North Central Avenue
25 Suite 2600
26 Phoenix, Arizona 85012
Attorneys for Pine Water
Company

22 By


23 John Gliege, Esq.
24 Law Office of John G. Gliege
25 P.O. Box 1388
26 Flagstaff, Arizona 86002-1388
Attorney for Pine-Strawberry
Water Improvement District

By

John O. Breninger
P.O. Box 2096
3475 Whispering Pines Road
Pine, AZ 85544-2096

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

By _____
Robert M. Cassaro
P.O. Box 1522
Pine, Arizona 85544

EXHIBIT "A"

I have read the foregoing Protective Agreement dated March 19, 2004, in In
The Matter Of The Application Of Pine Water Company For A Determination Of
The Current Fair Value Of Its Utility Plant And Property And For Increases In Its
Rates And Charges Based Thereon For Utility Service And For Approval To Incur
Long-Term Debt in Docket No. W-03512A-03-0279 and agree to be bound by the terms
and conditions of such Agreement.

GARY H. HORTON
Name

[Signature]
Signature

ARIZONA CORP Comm
Employer or Firm

1200 WEST Washington St
PHOENIX AZ 85007
Business Address

ATTORNEY
Position or relationship with the
Arizona Corporation Commission

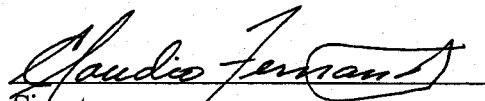
MARCH 19, 2004
Date

1525604.1

EXHIBIT "A"

I have read the foregoing Protective Agreement dated MARCH 19, 200⁴~~3~~, in In
The Matter Of The Application Of Pine Water Company For A Determination Of
The Current Fair Value Of Its Utility Plant And Property And For Increases In Its
Rates And Charges Based Thereon For Utility Service And For Approval To Incur
Long-Term Debt in Docket No. W-03512A-03-0279 and agree to be bound by the terms
and conditions of such Agreement.

CLAUDIO FERNANDEZ
Name


Signature

ARIZONA CORP COMM
Employer or Firm

1300 WEST WASHINGTON ST
PHOENIX ARIZONA 85007
Business Address

Position or relationship with the
Arizona Corporation Commission

MARCH 19, 2004
Date

1525604.1

EXHIBIT "A"

I have read the foregoing Protective Agreement dated 3/19, 2004, in In
The Matter Of The Application Of Pine Water Company For A Determination Of
The Current Fair Value Of Its Utility Plant And Property And For Increases In Its
Rates And Charges Based Thereon For Utility Service And For Approval To Incur
Long-Term Debt in Docket No. W-03512A-03-0279 and agree to be bound by the terms
and conditions of such Agreement.

Name

Signature

Employer or Firm

Business Address

Position or relationship with the
Arizona Corporation Commission

Date

1525604.1

EXHIBIT "A"

I have read the foregoing Protective Agreement dated 3-19, 2007, in In
The Matter Of The Application Of Pine Water Company For A Determination Of
The Current Fair Value Of Its Utility Plant And Property And For Increases In Its
Rates And Charges Based Thereon For Utility Service And For Approval To Incur
Long-Term Debt in Docket No. W-03512A-03-0279 and agree to be bound by the terms
and conditions of such Agreement.

Harry D. Jones

Name

Harry Jones

Signature

HDT MANAGEMENT

Employer or Firm

HC 8 Box 363

Business Address

Position or relationship with the
Arizona Corporation Commission

Date

1525604.1